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November 12, 2004

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Federal Communications Commission
Consumer Inquiries & Complaints Division
Consumer & Governmental Affairs Bureau
Attn: Martha E. Contee, Chief
445 12th Street SW
Washington, D.C. 20554

**Re: Complaint of Mr. Louis J. Schwarz
FCC No. 04-N93129, August 1, 2004**

Dear Ms. Contee:

This firm is counsel to WBAL Hearst-Argyle TV, Inc., licensee of Television Station WBAL-TV, Baltimore, Maryland ("WBAL").

I am writing in response to the informal complaint lodged with the Federal Communications Commission ("FCC") by Mr. Louis J. Schwarz pursuant to Section 305 of the Telecommunications Act, 47 U.S.C. § 305, and Sections 79.2 *et seq.* of the FCC's Rules, 47 C.F.R. §§ 79.2, *et seq.* This complaint has been assigned file number FCC No. 04-N93129 by your office.

WBAL received notice of Mr. Schwarz's complaint through a letter, dated October 25, 2004, from the FCC's Consumer Inquiries & Complaints Division.

Mr. Schwarz contends in his complaint that on Sunday, August 1, 2004, around 2:00 p.m. WBAL failed to provide closed captioning of a live news conference in which Homeland Security

Secretary Tom Ridge provided information about potential terrorist targets. Mr. Schwarz implies that the station should have provided closed captioning so that hearing-impaired viewers could be provided with important emergency information.

Based on Mr. Schwarz's complaint, WBAL undertook a review of its records pertaining to the August 1, 2004 broadcast. Although WBAL is sensitive to the concerns voiced by Mr. Schwarz, the facts simply do not support his contention that the station did not provide adequate information to hearing impaired viewers in its audience. In fact, it is clear that WBAL's coverage comported with the FCC's emergency information rule and the FCC's order adopting the rule.

The relevant portions of WBAL's broadcast can be summarized as follows. On August 1, 2004, at approximately 2 p.m., WBAL interrupted its regularly scheduled programming to broadcast an NBC Special Report ("Report"). The Report was approximately 15 minutes in length, and consisted primarily of Homeland Security Secretary Tom Ridge issuing a warning involving the financial service sectors of New York, northern New Jersey and Washington, D.C. He stated that intelligence indicated terrorists may target buildings in those areas for possible future attacks. He gave no time frame for the attacks and told viewers to be on the lookout for suspicious activity.

Secretary Ridge's news conference began at approximately 2:00 p.m. At approximately 2:01 p.m., a full-screen graphic appeared, which stated "High Risk of Terrorist Attacks" and listed the financial sectors of New York, Northern New Jersey and Washington, D.C. This graphic was shown again at 2:13 p.m. and at the conclusion of the Report, at approximately 2:15 p.m. At approximately 2:02 p.m., an easy-to-read banner appeared at the bottom of the screen. The banner stated that the federal terror threat level had been raised in New York, New Jersey and Washington, D.C. The banner remained at the bottom of the screen for the remainder of the Report (except where full-screen graphics were shown). Information in the banner rotated every minute or so to reflect that the terror threat level was not raised nationwide, to identify the speaker as Tom Ridge, and to provide the threat level information regarding the three cities in question.

At approximately 2:03 p.m., a full-screen graphic appeared titled "Potential Targets." Underneath, it stated: New York Stock Exchange, New York City; Citigroup, New York City; Prudential, Newark, New Jersey; World Bank, Washington, D.C.; and International Monetary Fund, Washington, D.C. This graphic was shown again around 2:13 p.m.

The emergency information requirements in Section 79.2 of the Commission's rules became effective on August 29, 2000. Our research has revealed no fine, forfeiture, or other complaint proceedings in which the FCC has interpreted the scope of this rule. Thus, stations such as WBAL are left to rely on the text of the rule itself, as well as the FCC's order adopting the rule, to determine the reach of Section 79.2.

According to the rule, programmers must make certain "emergency information" accessible to persons with hearing disabilities through a method of closed captioning or some other manner of

visual presentation. "Emergency information" is defined to include "information, about a *current emergency*, that is intended to further the protection of life, health, safety, and property, i.e., critical details regarding the emergency and how to respond to the emergency." 47 C.F.R. § 79.2(b)(1) (emphasis added).

In this case, the Report did not contain any "emergency information" as defined by the rule. No "current emergency" existed at the time of the Report. Secretary Ridge did not provide any time frame for the potential terrorist attacks and did not even instruct viewers to stay away from the financial sectors of the cities he named. While the Secretary stated that the "terror alert level" was raised for the three cities in question, he did not tell viewers to take any particular safety precautions (aside from reporting "suspicious activity"). In response to a question, Secretary Ridge said "we have no specific information that says an attack is imminent." Since no emergency existed, there was no "emergency information" that WBAL was required to make accessible to its hearing impaired viewers. The station was therefore in compliance with the Commission's emergency information rule.

Assuming for the sake of argument that the Report contained "emergency information," all of the emergency information need not be made accessible, but rather only "critical details" pertaining to the emergency situation, i.e., that information that is conveyed to protect the life, health, safety, and property of the viewers. "Critical details" include such things as "specific details regarding the areas that will be affected by the emergency, evacuation orders, detailed descriptions of areas to be evacuated, specific evacuation routes, approved shelters or the way to take shelter in one's home, instructions on how to secure personal property, road closures, and how to obtain relief assistance." 47 C.F.R. § 79.2(a)(2).

The FCC's order implementing these rules drives home an important point: the decision as to what constitutes a critical detail is committed to the sound discretion of the programmer. According to the FCC, "in determining which particular details about the emergency need to be made accessible, programmers may rely on their own good faith judgment." In the Matter of Closed Captioning and Video Description of Video Programming, FCC 00-136, 15 FCC Rcd. 6615, ¶¶ 2 & 6 (April 14, 2000). This flexibility is appropriate, given that the nature of emergency coverage dictates that decisions be made quickly and in a manner consistent with the particular type of emergency involved.

The FCC has also made abundantly clear that the rule does not require that programmers use live or real-time closed captioning for emergency information. Id. at ¶ 11. The FCC reached this conclusion based upon its recognition of the undue financial and human burden such a requirement would place upon programmers. Thus, programmers have at their disposal a number of methods with which to make critical details of an emergency accessible to hearing impaired viewers, including open captioning, crawls, scrolls, or other methods of visual presentation. As a consequence, without real-time captioning, hearing impaired viewers may well feel some anxiety that they are not receiving critical details during a particular emergency. However, the FCC has

resolved to place the responsibility with the programmers to ensure that such viewers do receive critical details.

Against this backdrop, it is clear that WBAL's broadcast of the news conference in question complied with 47 C.F.R. § 79.2. The FCC has committed to the programmer's discretion which critical details of a particular emergency need be made accessible and in what form those details are made accessible. In this case, assuming that the Report presented *any* emergency information, the "critical details" regarding the Report would be: (1) the terrorist threat level has been raised and (2) the threat involves the financial sectors of New York, northern New Jersey and Washington, D.C. As stated above, the Report made this information accessible to persons with hearing disabilities through the use of a banner containing the "critical details" at the bottom of the screen throughout most of the news conference. Two different full-screen graphics were also used at various times to convey the critical details to hearing impaired viewers.

While the station's broadcast of the Report was not captioned, WBAL was in full compliance with the Commission's rule regarding accessibility of emergency information. First, the news conference contained no emergency information. No time frames or concrete safety precautions were provided to viewers regarding the potential terrorist threats. Since no emergency information existed, there were no requirements triggered by the Commission's emergency information rule.

In the alternative, even assuming that Secretary Ridge provided emergency information during the news conference, any information constituting critical details of the emergency was made accessible to WBAL's hearing impaired viewers in ways other than closed captioning. It simply cannot be that everything said during the news conference constitutes a "critical detail" about the purported emergency, because such a reading would eviscerate the FCC's decision not to require live captioning of emergency information. Mr. Schwarz's complaint simply represents an attempt to extend the reach of 47 C.F.R. § 79.2 far beyond that which a plain reading of its terms provides.

For the reasons described above, WBAL's broadcast concerning Secretary Ridge's August 1, 2004 news conference complied fully with the FCC's rules regarding the accessibility of such coverage to hearing impaired viewers. WBAL takes very seriously its obligation to make its programming accessible to individuals with hearing impairments and will continue to strive for full compliance with these rules.

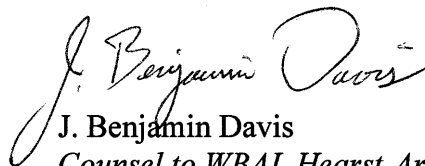
The signature of the Licensee's officer in the Certification of Licensee attached hereto indicates that he has read this letter and that to the best of his knowledge the information is true and correct.

Martha E. Contee, Chief
November 12, 2004
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Should you have any further questions regarding the above-referenced complaint, please do not hesitate to contact the undersigned.

Sincerely,

BROOKS, PIERCE, McLENDON,
HUMPHREY & LEONARD, L.L.P.

A handwritten signature in cursive script, reading "J. Benjamin Davis".

J. Benjamin Davis
Counsel to WBAL Hearst-Argyle TV, Inc.

JBD/dkb
Enclosure

cc: Jenifer Simpson (FCC, via e-mail)
Mark J. Prak, Esq.
Mr. Louis J. Schwarz

CERTIFICATION OF LICENSEE

The signature of the Licensee's officer below indicates that he has read the foregoing letter and that to the best of his knowledge the information is true and correct.

WBAL Hearst-Argyle TV, Inc.

By:

A handwritten signature in black ink, appearing to read 'Bill Fine', is written over a horizontal line.

Bill Fine
General Manager, WBAL-TV